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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 56

SARAH O'DONNELL, Administratrix of the Estate of WILLIAM O'DONNELL, Deceased,
Petitioner,

vs.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
Respondent.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

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Midwest Law Printing Co., DElaware 7-6669

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It is our understanding of the practice in this court that it is not necessary for the petitioner, whose petition has been granted, to file any further papers in connection with his case, unless he desires to do so.

In Appellate Practice & Procedure in the Supreme Court of the United States, by Robertson, which we had heretofore regarded as authoritative, and had followed, we find the following, p. 77:

"BRIEF ON THE MERITS.—Upon the granting of a writ of certiorari the petitioner may (1) stand upon the brief filed in support of his petition, (2) file a complete new brief at any time up to three weeks before the argument of the case, or (3) file a new brief as a supplement to the brief filed in support of the petition.

"When the case has been reached for argument the petition for the writ and the brief filed in support of it will be before the Court, and if it is felt that the ground has been amply covered in these papers it is not necessary to file new briefs."

We have not been able to find anything in the Rules, or in the decisions of this Court, in conflict with the procedure indicated in the foregoing citation.

There is no rule requiring that the Clerk or opposing counsel be notified of petitioner's intention to rely on her petition. That fact would become obvious from the moment that a further brief was due, if it were not filed. Serving notice that petitioner was not filing another brief would be an idle ceremony.

In any event, counsel has cited no rule indicating within what time he should be notified that petitioner intends to stand on the brief accompanying her petition. We therefore now state that petitioner desires to stand on the briefs accompanying her petition, and submit that neither our petition nor the writ of certiorari heretofore issued herein should be dismissed.

Respectfully submitted,

JOSEPH D. RYAN,
Attorney for Petitioner.